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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 306

H. V. WATKINS, SR., ET AL., EXECUTORS OF THE ESTATE OF RICHARD HOWARD GREEN, DECEASED, ET AL., PETITIONERS

v.

EUGENE FLY, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MISSISSIPPI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 76–77) is unreported. The opinions of the Circuit Court of Appeals (R. 83–86, 95–96) are reported in 136 F. 2d 578.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 4, 1943 (R. 87). A petition for rehearing was denied on July 7, 1943 (R. 96).

The petition for a writ of certiorari was filed August 30, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Is the estate entitled to a deduction, under Section 303 (a) (3) of the Revenue Act of 1926, of the value of certain real estate devised to charity where the State Constitution and Code provide that such a devise shall be null and void and the heir at law shall take as though no testamentary disposition had been made?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The applicable provisions of the federal statute and of the Constitution of the State of Mississippi are set out in the Appendix, *infra,* pp. 9–10.

STATEMENT

The executors of Richard H. Green have sued the Collector of Internal Revenue for the District of Mississippi to recover $9,931.66 estate tax and interest alleged to have been overpaid (R. 8) under the following facts:

Richard H. Green died testate, a resident of Mississippi, on October 1, 1936 (R. 72).

By Item XI of his will (R. 12–13) the decedent devised and bequeathed all the rest, residue, and remainder of his estate to his executors as trustees to establish and administer hospital facilities for

negroes to be located in or near Jackson, Mississippi. After decedent's death the trustees organized, under the laws of Mississippi, "The R. H. Green Foundation," a nonstock eleemosynary corporation, to carry out the purpose of the will (R. 72).

Among the assets of the residuary estate devised for the benefit of the charity was real estate of a value of $59,117 (R. 72). Decedent's heirs at law were a sister, Mrs. Florence Green McAlpin, and a niece, Mrs. Margaret Green Lotterhos (R. 27, 73). Mrs. McAlpin had a claim for $17,700.84 against decedent's estate for money advanced to the decedent during his lifetime (R. 30). A doubt having arisen regarding the validity of this claim and the validity of the devise of the real estate to charity, the executors filed a petition (R. 25) in the Chancery Court, First Judicial District of Hinds County, Mississippi, in connection with their final accounting, recommending a plan under which the claim would be paid and a quitclaim deed to the realty would be executed by the two heirs at law (R. 30–31). This plan was adopted by the court, and an order for payment of the claim was entered, conditioned upon the delivery of a quitclaim deed from the two heirs at law to the executors and trustees of decedent's estate. Such a deed was executed and delivered. (R. 30–33, 73.)

In a federal estate tax return filed in 1937, the executors included the value of the realty devised

to charity in the sum of $59,117 (R. 72). In 1939 a claim for refund of estate tax was filed for $9,931.66 (R. 35–41), representing the difference in estate tax paid and the amount payable if the value of the real estate was not subject to tax. The claim was rejected by the Commissioner in 1940 (R. 64–66), and suit was filed against the Collector in 1941 (R. 2).

The District Court held that under the Constitution of Mississippi the devise of real estate to charity was null and void; that no testamentary disposition had been made of the property; that the heirs at law took the property as in intestacy; that title vested in the heirs immediately on decedent's death; and that the value of the property should be included in decedent's gross estate (R. 76–77). Judgment was entered for the Collector (R. 78). On appeal, the Circuit Court of Appeals affirmed (R. 83–87) and denied a petition for rehearing (R. 95–96).

ARGUMENT

1. The court below correctly held that where a devise of real estate to charity is wholly void under state law so that the charity takes nothing under the decedent's will, no deduction from the gross estate is allowable under Section 303 (a) (3) of the Revenue Act of 1926, as amended. (Appendix, p. 9.)

This statute allows a deduction for testamentary dispositions only. *Taft* v. *Commissioner,* 304

U. S. 351, 358. It does not allow a deduction for gifts to charity made by the decedent's heirs or other persons pursuant to the decedent's expressed desires or otherwise. *Mississippi Valley Trust Co.* v. *Commissioner,* 72 F. 2d 197, 199 (C. C. A. 8th), certiorari denied, 293 U. S. 604, rehearing denied, 293 U. S. 631; *Burdick* v. *Commissioner,* 117 F. 2d 972 (C. C. A. 2d), certiorari denied, 314 U. S. 631.

Here, the exercise of any power to make a testamentary disposition of real estate to charity was prohibited by the Constitution and statutes of the State of Mississippi (Appendix, p. 10), which, at the time of decedent's death, provided that such a devise "shall be null and void, and the heir at law shall take the same property so devised or bequeathed, as though no testamentary disposition had been made." The Constitution and statutes of Mississippi are controlling here.

The courts of Mississippi have consistently held that a devise of real estate to charity is void *ab initio* and not merely voidable. Their decisions hold that a devise of real estate to charity is of no effect whatever insofar as a testamentary disposition of the property is concerned.[1] Under the law of Mississippi the heirs took the property and any gift to charity was subsequently effected by them

[1] *Blackbourn* v. *Tucker*, 72 Miss. 735, 747 (1895); *Natl. Bk. of Greece* v. *Savarika*, 167 Miss. 571, 596–597 (1933); *Old Ladies' Home Ass'n* v. *Grubbs' Est.*, 191 Miss. 260, 264 (1939); *Greely* v. *Houston*, 148 Miss. 799, 806–807 (1927).

in a quitclaim deed and not by the testator. Therefore the value of the real estate was properly included in decedent's gross estate, and there is no allowable deduction.

2. There is no conflict of decisions, as contended by the taxpayer (Pet. 6), between the instant case and *Commissioner* v. *First Natl. Bank*, 102 F. 2d 129 (C. C. A. 5th); *Humphrey* v. *Millard*, 79 F. 2d 107 (C. C. A. 2d); *Dimock* v. *Corwin*, 99 F. 2d 799 (C. C. A. 2d), affirmed, 306 U. S. 363; and *Mead* v. *Welch*, 95 F. 2d 617 (C. C. A. 9th). Whatever may be said of the correctness of those decisions, they are not in point, for they involved provisions of state law that were construed to render the bequests voidable rather than void, and the gifts to charity were therefore regarded as relating back to the decedent's will.

Nor is the decision of the court below in conflict with decisions of this Court cited by petitioner (Pet. 7–8), none of which involved the construction of Section 303 (a) (3). *Helvering* v. *Grinnell*, 294 U. S. 153, held merely that property does not pass under a general power of appointment exercised by the donee-decedent, where the appointees renounce and take under the donor's will. *Helvering* v. *Safe Deposit & Trust Co.*, 316 U. S. 56, involved the inclusion in a decedent's gross estate of the value of property in litigation which was claimed by relatives as appointees under his will and as heirs. Part of the amount

claimed was allotted to the litigants by a compromise agreement approved by a state court. The question was whether the share attributable to the claim under the appointment should be included in decedent's gross estate as property passing under a power of appointment. *Lyeth* v. *Hoey,* 305 U. S. 188, held that an heir who received an amount in compromise of a will contest was not subject to income tax, since he received the same as an inheritance. None of those cases supports the view that a devise of real estate to charity which is totally void under local law so that the charity has no standing as a devisee must be given effect for tax purposes, where the heirs fail to take possession of the property and execute a quitclaim deed to the charity.

Decisions such as *Blair* v. *Commissioner,* 300 U. S. 5, and *Freuler* v. *Helvering,* 291 U. S. 35, holding that the federal courts are bound by decrees of state courts construing wills or trust instruments, have no application here. In those cases the state court order or decree determined or established property rights in the heirs or beneficiaries. The decree of the Mississippi Chancery Court, in the instant case, did not hold the devise to charity to be valid, and any such decree would have been contrary to the decisions of the Mississippi courts (R. 96). Neither the decedent nor the court's decree vested or established any property right in the charity under the will.

The quitclaim deed of the heirs at law conveyed the property after they had acquired it under the will and the laws of Mississippi.[2]

CONCLUSION

The decision below is correct; there is no conflict; the petition should be denied.

Respectfully submitted.

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SEPTEMBER 1943.

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[2] *Weeks* v. *Bridgman*, 159 U. S. 541, and similar cases relied upon as conflicting (Pet. 8), have no bearing upon the question here.